No. [redacted]103

JUN 1 1950
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term 1949

In the Matter

—*of*—

R. J. STEVENS BAKING CORP.,

Bankrupt,

CREAM-O PRODUCTS CORP.,

Petitioner,

—v.—

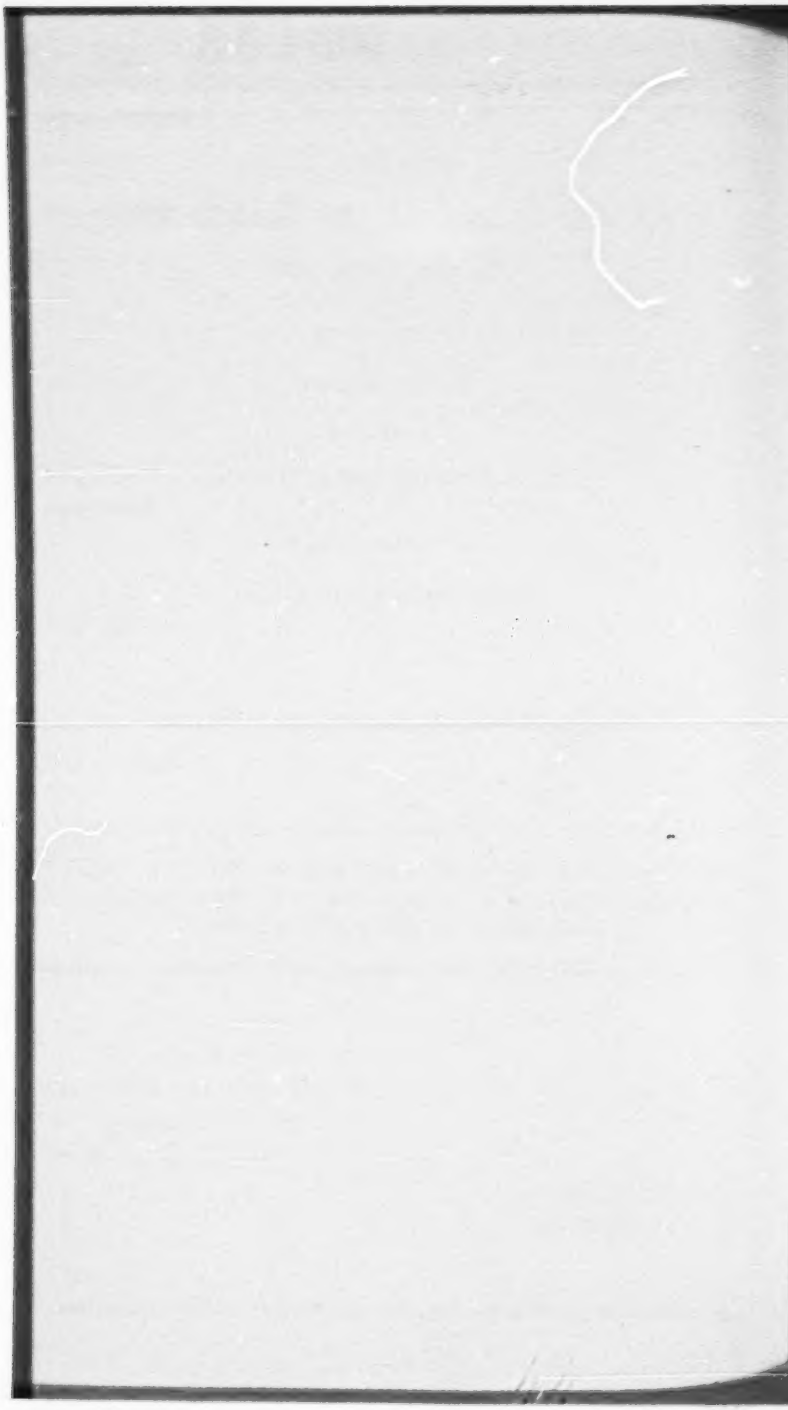
HARRY HOFFMAN, Receiver and Trustee,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Cream-O Products Corp., respectfully shows to the Court:

Opinions Below

The opinion of the Court of Appeals for the Second Circuit, reported at 180 F. 2d 649, appears at page 55, of the record. The District Court rendered no opinion. The opinion of the Referee in Bankruptcy appears at folios 94-111 of the record.

Jurisdiction

The judgment of the Court of Appeals was rendered March 20, 1950. Jurisdiction of this Court is founded on Sec. 1254 of Title 28 of the United States Code.

Questions Presented

1. Whether, under the Uniform Conditional Sales Act, a conditional bill of sale, timely filed, which states the purchase price only by reference to an extrinsic source is void as to a trustee in bankruptcy.

2. Whether the court below—by holding directly in conflict with the holding of the Second Circuit *In re Jaeger*, 284 Fed. 136—violated the direction of the Uniform Conditional Sales Act that it be construed uniformly.

3. Whether the holding below is contrary to the law of New York.

Statute Involved

The statute involved is the *Uniform Conditional Sales Act* (*N. Y. Personal Property Law*, §§60 to 80-j). The relevant portions of the statute are set out in the Appendix (*infra*, pp. i-vii).

Statement

On about January 10, 1949, respondent, as receiver in bankruptcy of R. J. Stevens Baking Corp., began this proceeding by petition in the District Court for the Eastern District of New York (13, 94).[1] Respondent sought an order decreeing that, as to him, a conditional bill of sale of certain machinery, executed by the bankrupt to petitioner, was void. Pending decision on respondent's petition, the Referee ordered the machinery sold free of the lien of the conditional bill of sale, the lien, if valid, to attach to the proceeds of the sale (31, 46, 95).[2]

The Referee in Bankruptcy, by written decision, found that the conditional bill of sale was void as to respondent. On June 13, 1949, he entered an order decreeing that petitioner had no lien or claim to the proceeds of the machinery (112). The District Court, without opinion, confirmed the Referee's order (135). The Court of Appeals affirmed (Record, p. 58).

The facts are undisputed (98) and are as follows.

Prior to March, 1948, petitioner had been engaged in producing and selling certain cereal products (99). On March 10, 1948, petitioner sold its business to R. J. Stevens

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1. Later respondent was elected trustee in bankruptcy and continued the proceeding in such capacity.
2. Record references throughout are to folios.

Baking Corp., the bankrupt. The sale comprised machinery, packing materials and trade names (99). The machinery was sold by conditional bill of sale, dated March 10, 1948 (55) and recorded April 1, 1948 (48). This instrument, after describing the machinery sold, provided as follows:

> "Title to the machines and machinery shall remain in the vendor until the full purchase price therefor has been paid by the vendee in accordance with an agreement being entered into simultaneously herewith between the parties hereto" (56).

The price of the machinery was not stated except by this reference to the collateral agreement made simultaneously.

The collateral agreement (23)—though reciting the execution of the conditional bill of sale—did not purport to effect the sale of the machinery. Primarily, it dealt with the sale of the packing materials and the trade names—none of which were conditionally sold. The collateral agreement did, however, state the sale price of the machinery and the manner of payment.[3]

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3. The price for the machinery conditionally sold was $12,771.05 (69), payable as follows:

   $687.37 by check given on or before March 31, 1948 (70)

   $3339.35 representing the unpaid balance on one of the machines, by the purchaser's undertaking to pay this sum to petitioner's vendor (70).

   $8744.33 by the purchaser's paying to petitioner 10% of its weekly gross sales from merchandise produced with the aid of any of the machines or packing materials sold. All such payments were to be applied, first, to payment of the price of the packing materials and, thereafter, to the price of the machinery. Any balance still owing on November 17, 1949, if under $5000, was to be paid in cash; if over $5000, was to be paid $5000 in cash and the balance in four equal monthly notes (76-78).

The conditional bill of sale was timely filed in the Office of the Register of Kings County. The collateral agreement was not filed (104).

The Referee, on the authority of *Empire State Chair Co., Inc.* v. *Beldock*, 2d Cir., 140 F. 2d 587, found that the filing of the conditional bill of sale—without filing the collateral agreement—was not compliance with the filing provisions of the Uniform Conditional Sales Act (107). He held the conditional bill of sale to be void as to the trustee in bankruptcy. The District Court confirmed on the Referee's decision (135). The Court of Appeals affirmed also on the authority of *Empire State Chair Co., Inc.* v. *Beldock, supra.* Petition for rehearing—noting the conflict between the holding here and that of the Seventh Circuit *In re Jaeger*, 284 Fed. 136—was denied (Record, p. 68).

Specification of Errors

The Court of Appeals erred:

(1) In holding that, under the Uniform Conditional Sales Act, the conditional bill of sale given by the bankrupt to petitioner was void as to the trustee in bankruptcy because it stated the purchase price only by reference to the collateral unfiled agreement.

(2) In refusing to follow the holding of the Seventh Circuit, *In re Jaeger*, 284 Fed. 136 and, thereby, violating the express direction of the Uniform Act—adopted in New York—that it be construed so as to achieve uniformity.

(3) In refusing to follow the common law of New York, under which the bill of sale, as filed, was good as to third persons.

(4) In affirming the order of the District Court.

Reasons Relied on for Allowance of the Writ

I

THE HOLDING OF THE SECOND CIRCUIT IN THIS CASE IS DIAMETRICALLY OPPOSED TO THE HOLDING OF THE SEVENTH CIRCUIT — ALSO UNDER THE UNIFORM CONDITIONAL SALES ACT — IN RE JAEGER, 284 Fed. 136.

The *Uniform Conditional Sales Act*, §1 (N. Y. *Personal Property Law*, §61) defines a conditional sale as "any contract for the sale of goods under which possession is delivered to the buyer and the property in the goods is to vest in the buyer at a subsequent time upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency" (Appendix, p. i).

The instrument involved here is such a contract. It specifies (a) that the bankrupt is to have possession of the machinery (58) and (b) that title to the machinery is to vest in the bankrupt upon payment of "the full purchase price therefor" (56).

Under the *Uniform Conditional Sales Act*, must the filed contract also state the price, in order to be good as against a trustee in bankruptcy? The Second Circuit holds here that it must. The Seventh Circuit, *In re Jaeger*, 284 Fed. 136, held precisely to the contrary—that the price need not be stated if, as here, the filed contract identifies and refers to an extrinsic source from which the price may be determined.

In re Jaeger, 284 Fed. 136, affg. 284 Fed. 130, the Seventh Circuit said:

"PER CURIAM. On this appeal the only material question is whether a contract of conditional sale, which does not include a stated price for the goods, but which does contain a statement of means by which the price shall be determined, is properly receivable for record under the Wisconsin statute. We approve the affirmative answer given in the opinion of the District Judge (284 Fed. 130), and the decree is accordingly affirmed."

The facts in *In re Jaeger* parallel those here. Both cases arose under the Uniform Conditional Sales Act. In neither was the price stated in the instrument filed. In both, the price was ascertainable from an extrinsic source identified in the document filed. Yet opposite results were reached.

II

THE HOLDING BELOW VIOLATES BOTH THE UNIFORM CONDITIONAL SALES ACT AND THE COMMON LAW OF NEW YORK.

A. Under the Uniform Act.

The law is clear that, if a question is covered by the terms of a Uniform Act, it must be resolved by the provisions of the Act exclusively. The law as it was prior to adoption of the Act is not relevant. *Commercial Nat. Bank* v. *Canal Louisiana B. & T. Co.*, 239 U. S. 520, 529.

The Seventh Circuit, *In re Jaeger,* approved the opinion of the District Court. The District Court in that case held that, properly construed, the Uniform Conditional Sales Act did not require the price to be stated in the filed conditional bill of sale. It reasoned as follows:

First, the *Uniform Act* does not expressly require that either the purchase price or terms of payment be stated in order to make the filed contract good as to third persons. *Second*, the tenor of the Act is to the contrary so far as concerns the initial filing. N. Y. *Personal Property Law*, §70 (*Cf. Unif. Cond. Sales Act*, §10) (*Appendix*, p. iv), requires the filing officer to enter only the names of the parties, the date of filing, the filing number and the date of satisfaction. This is in contradistinction to the requirement of the *very same section* that, where railroad equipment is conditionally sold, the record must show, also, either the sum remaining to be paid on the contract or the price of the goods. It is only when the initial filing is renewed at the end of the three-year period that the record must show "the amount remaining to be paid" on the contract. N. Y. *Personal Property Law* §71 (*Unif. Cond. Sales Act*, §11) (*Appendix*, p. vi). Therefore, the District Court concluded *In re Jaeger* that the filed contract is good even though the price is not stated.

The validity of this reasoning is emphasized by the New York statute. New York has supplemented the *Uniform Conditional Sales Act*. N. Y. *Personal Property Law*, §64(a), *Appendix*, p. i, provides that, where property is conditionally sold for $1500 or less, the price—in addition to other terms—must be stated. Non-compliance results in a financial penalty against the seller in the buyer's favor. There is no other penalty. The contract continues valid both as to the buyer and third persons. This is added proof that—as held *In re Jaeger*—the price must be stated only in those cases in which the Act expressly so requires.

Since the Uniform Act contained the answer to the question raised here, the court below erred in departing from the Act and seeking the answer elsewhere.

B. At common law.

Questions arising under the Uniform Act—but not covered thereby—are to be resolved by the "rules of law and equity, including the law merchant"—in short, the common law. N. Y. *Personal Property Law*, §80-h; *Uniform Conditional Sales Act*, §29 (*Appendix*, p. vii).

If we assume that the question at issue here is not covered by the Uniform Act, it must be answered by analogous cases at common law in New York. *Portfolio* v. *Rubin*, 196 N. Y. App. Div. 316, aff'd 233 N. Y. 439. At common law, the rule is alike for chattel mortgages and conditional sales contracts. *Kennedy & P. Co.* v. *Hassen*, 18 S. W. 2d 112, 113; *Huber* v. *Cloud*, 102 N. J. L. 181, 130 Atl. 562, 563; *Stoll* v. *Schneider*, 158 Tenn. 341, 13 S. W. 2d 325; *Rogers* v. *Whitney*, 91 Vt. 79, 99 Atl. 419, 420.

The general rule—followed in New York—is that a recorded chattel mortgage is valid as to third persons—including a trustee in bankruptcy—even though it omits the amount of the debt or describes it only generally, necessitating extrinsic inquiry to ascertain the amount and terms. 145 A. L. R. 369, 375; *Youngs* v. *Wilson*, 27 N. Y. 351; *Shuler* v. *Boutwell*, 18 Hun 171; *Farr* v. *Doxtater*, 9 N. Y. S. 141; *In re Hawks*, 204 Fed. 309, 319, aff'd sub nom., *Crowder* v. *Allen-West Commission Co.*, 8 Cir., 213 Fed. 177; *Tobin* v. *Kampe*, 8 Cir., 132 F. 2d 64.

Therefore, the court below misapplied the New York law, even if it be supposed that the common law of New York—not the Uniform Act—should have been applied here.

C. The court below erroneously assumed that this case was controlled by the cases dealing with the sufficiency of the description of the property sold. Yet even the latter—when properly applied—required a holding for the petitioner.

The court below likened the instant case to those in which the issue was the sufficiency of the description of the property sold. The court held that to omit the price is the equivalent of omitting any description of the property sold. As the latter omission was held—in *Empire State Chair Co., Inc.* v. *Beldock*, 2d Cir., 140 F. 2d 587—to void the contract as to a trustee in bankruptcy, the same result was reached here.

The court below overlooked a decisive fact which voided its analogy. The instant conditional sales contract, though omitting the price, did refer to the "agreement being entered into simultaneously herewith between the parties" (56) as the extrinsic source from which the price and terms of payment could be ascertained. The case, therefore, was not analogous to those in which the description was *omitted entirely* but rather to those in which the *instrument suggested extrinsic inquiries* which, if pursued, would identify the property sold. In the latter instances, the recorded instrument is good as to third persons—including trustees in bankruptcy—if, aided by extrinsic inquiry which the instrument itself suggests, the description will enable identification of the property. This general rule—followed in New York—applies alike to chattel mortgages and conditional sales contracts. 65 A. L. R. 718; *Tilton* v. *H. M. Wade Mfg. Co.*, 4th Cir., 2 F. 2d 358, 359; *In re Raney* (N. D. Tex. 1912), 202 Fed. 1000; *In re Hartley* (M. D. Ga. 1929), 29 F. 2d 916; *Miller* v. *McCray Refrig. Co.*, 8th Cir., 130 F. 2d 873, 874; *Stoll* v. *Schneider* (Tenn.), 13 S. W. 2d

325; *In re Lowry*, 4th Cir., 40 F. 2d 321, 323; *National Cash Register Co.* v. *Marks*, 6th Cir., 13 F. 2d 628, 629; *Liquid Carbonic Corp.* v. *Phillips*, 5th Cir., 68 F. 2d 515; *Floyd* v. *C. Nelson Mfg. Co.*, 5th Cir., 93 F. 2d 857, 858; *In re Kansas City Journal-Post Co.*, 8th Cir., 144 F. 2d 791, 807; *Tobin* v. *Kampe*, 8th Cir., 132 F. 2d 64; *Conkling* v. *Shelley*, 28 N. Y. 360, 362; *Clement* v. *Congress Hall*, 72 N. Y. Misc. 519; *Russell* v. *Winne*, 37 N. Y. 591.

Had the court below correctly applied the analogy derived from cases involving the sufficiency of the description of the property, its holding would follow—not conflict with—*In re Jaeger*, 7th Cir., 284 Fed. 136 and *Tobin* v. *Kampe*, 8th Cir., 132 F. 2d 64.

In re Jaeger, 284 Fed. 136, represents not only the rule under the Uniform Act but also the rule under the common law of New York. It is respectfully urged that certiorari be granted to eliminate the conflict of the holding below with *In re Jaeger*.

III

THE HOLDING BELOW DEPARTS FROM THE RULE FOR CONSTRUCTION OF UNIFORM LAWS ENUNCIATED BY THIS COURT.

The Uniform Conditional Sales Act—like almost all other uniform laws—directs that it "shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it." *Uniform Conditional Sales Act*, §30; *New York Personal Property Law*, §80-i (*Appendix*, p. vii). This is a direction to achieve uniformity. In *Commercial Nat. Bank* v. *Canal Louisiana B. & T. Co.*, 239 U. S. 520, this Court said:

> "• • • It is apparent that if these uniform acts are construed in the several states adopting them accord-

ing to former local views upon analogous subjects, we shall miss the desired uniformity, and we shall erect upon the foundation of uniform language separate legal structures as distinct as were the former varying laws. It was to prevent this result that the uniform warehouse receipts act expressly provides (§57): 'This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.' This rule of construction requires that in order to accomplish the beneficient object of unifying, so far as this is possible under our dual system, the commercial law of the country, there should be taken into consideration the fundamental purpose of the uniform act, and that it should not be regarded merely as an off-shoot of local law. * * * "

To this end, the courts have held that the statutory direction to achieve uniformity binds the courts of each state to follow the holdings of other jurisdictions which have already construed the Uniform Act.

"This Act has been adopted by many states of the Union in order that there may be uniformity of the laws on this subject within the boundaries of the states adopting it. In the interpretation of similar uniform laws, the decisions of other jurisdictions on such points as have not been decided by the courts of the forum, are not merely persuasive, *but are as binding as would be a decision of the highest court of the forum.*" (Italics supplied.)

In re Halferty, 7th Cir., 136 F. 2d 640 (involving the Uniform Conditional Sales Act).

To the same effect:

Manchester v. *Townshend* (Vt.), 192 Atl. 22, 23;
Aetna Chemical Co. v. *Spaulding & Kimball Co.* (Vt.), 126 Atl. 582, 585;
Stewart v. *Hansen*, 62 Utah 281, 218 Pac. 959, 960;
Union Trust Co. v. *McGinty*, 212 Mass. 205, 98 N. E. 679, 681;
Sheffield-King Milling Co. v. *Domestic Science Baking Co.*, 95 Oh. St. 180, 115 N. E. 1014, 1016;
Hoffman v. *Palmer*, 2nd Cir., 129 F. 2nd 976, 985.

By directing its courts to achieve uniformity, the State of New York bound its courts to conform their holdings, under the Uniform Conditional Sales Act, to those in other jurisdictions. The court below was similarly bound. The Seventh Circuit, having decided—*In re Jaeger*—the point here involved, it was obligatory upon the Second Circuit to follow that holding, as though it were the holding of the highest court of the State of New York.

Therefore, this case presents not only a conflict between the Second and Seventh Circuits but, in essence, a departure by the Second Circuit from the law as it would have been found had the issue been decided by the New York State Court of Appeals. In either aspect, this case is an appropriate one for review here on certiorari. Rule 38, 5(b) of the Rules of this Court.

Obviously, the virtue of the Uniform Act is its uniformity. This has been destroyed by the holding below in disregard of Sec. 30 of the Uniform Act. Henceforth, the twelve jurisdictions which have adopted the Act must choose whether to follow the Seventh or the Second Circuit.

By their conflicting holdings, the Seventh and Second Circuits have erected "upon the foundation of uniform

language separate legal structures" contrary to the direction of this court in *Commercial Nat. Bank* v. *Canal Louisiana B. & T. Co., supra.* It avails the states little to strive for uniformity, if the Federal Courts are to exempt themselves from the direction of the Uniform Acts to construe these acts uniformly.

It is respectfully submitted that a review of this cause is required so that it may be made clear that the Federal Courts are under the same duty as those of the states to achieve uniformity in the construction of the Uniform Acts, now so widely adopted. The matter is of widespread public importance. Some seventy-six uniform laws have been adopted in from one to fifty-three states and territories. 1 *Uniform Laws Ann.*, page XI.

CONCLUSION

WHEREFORE, your petitioner respectfully prays that a writ of certiorari issue under the seal of this Court, directed to the United States Court of Appeals for the Second Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Court of Appeals in this cause to the end that this cause may be reviewed and determined by this Court as provided by the statutes of the United States, and that the judgment herein of said Court of Appeals be reviewed by this Court, and for such further relief as may be proper.

CREAM-O PRODUCTS CORP., Petitioner

By A. WALTER SOCOLOW,
Counsel for Petitioner.

JOSEPH M. COHEN,
Of Counsel.

APPENDIX

N. Y. Personal Property Law (Uniform Conditional Sales Act)

§61. Definitions

In this article "conditional sale" means (1) any contract for the sale of goods under which possession is delivered to the buyer and the property in the goods is to vest in the buyer at a subsequent time upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (2) any contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value of the goods, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming the owner of such goods upon full compliance with the terms of the contract **(Uniform Act, §1).**

§64-a Contents of Certain Conditional Sales Contracts

The printed portion of any conditional sales contract for the sale for fifteen hundred dollars or less of goods for any use other than a commercial or business use shall be in at least eight point type; the contract shall have written or printed thereon at the top thereof and also just above the place reserved for the signature of the buyer, in a size equal to at least ten point bold type, the words "Conditional Sales Contract" and an executed copy shall be delivered to the buyer at the time of the execution thereof.

Every such contract must contain:

(a) The name of the seller and the buyer.

(b) The principal place of business of the seller and the residence of the buyer.

(c) The date of sale.

(d) A description of the goods sold with the exception that the serial number or numbers thereof or similar information may be inserted in the seller's copy of such contract after the date of its execution.

(e) A statement of the transaction, itemized in figures in the following categories in form substantially as follows:

Cash price	$	
Credit service charge		
Insurance premium (if any)		
Other charges, if any, (itemized)		
.....	$	
.....		
Total purchase price		
Down payment		
(a) Cash	$	
(b) Allowances		
(c) Other credits		
Balance payable in installments		$

(f) The amount of each payment succeeding the down payment and the due date and period thereof and the place where such payments are to be made.

(g) A statement of the insurance premium shall be required only in case the cost of insuring the buyer's interest in the goods purchased is included in the contract or in case a separate charge is made to the buyer for any insurance. In any such case the contract shall state the type of coverage and whether the insurance is to be procured by

the buyer or the seller. The amount of such insurance premium may be combined with the credit service charge, but in such event the seller shall, within twenty-five days after the execution of the contract, mail or cause to be mailed to the buyer at his address as shown in the contract a statement reciting the separate amounts of the insurance premium and the credit service charge. The seller shall within said twenty-five days, mail or cause to be mailed to said address a copy of the policy or policies of insurance procured by the seller.

(h) The credit service charge may be expressed in dollars, or, if such be the case, may be stated as a simple interest charge on the unpaid balances payable in installments. The credit service charge on additional sales made to a buyer by a seller to whom he had previously sold goods under a conditional sales contract or contracts, or chattel mortgage or mortgages, where the amounts due thereunder are not fully paid, may be inserted in the seller's copy of the contract after the date of its execution, provided that such charge is computed pursuant to an arithmetical formula plainly stated in the contract, and the seller, within seven days from the date of the receipt of the buyer's request therefor, mails or causes to be mailed to the buyer at his residence as shown in the contract a statement of such charge; upon request of the buyer, the seller shall prove the accuracy of such charges.

In case of failure to comply with the provisions of this section the buyer shall have a right to recover an amount equal to the credit service charge (or ten per centum of the cash price if no credit charge is specified in the contract or supplementary statement) from the original seller.

§68. Railroad Equipment or Rolling Stock

No conditional sale of railroad, or street or interurban railway equipment or rolling stock shall be valid as against the purchasers and creditors described in section sixty-five, unless the contract shall be acknowledged by the buyer or attested in like manner as a deed of real property, and the contract, or a copy thereof, shall be filed or recorded in the office of the secretary of state; and unless when any engine or car so sold is delivered there shall then be plainly and conspicuously marked upon each side thereof the name of the seller, followed by the word "owner" **(Uniform Act, §8).**

§70. Filing, Entering and Indexing

The filing officer shall mark upon the contract or copy thereof filed with him the date and hour of its filing and shall file such contracts or copy thereof in his office for public inspection. Except as hereinafter provided, he shall keep a separate book or card index system in which he shall enter the names of the seller and buyer, the date of its filing, its filing number and the date of cancellation thereof, or of its discharge by payment of money into court, or of its vacation by order of the court; except that in entering the contracts mentioned in section sixty-eight of this article, the secretary of state shall record either the sum remaining to be paid upon the contract or the price of the goods. Such book or card index system shall be indexed alphabetically under the names of both seller and buyer. In the city of New York and in the County of Nassau, in case there is no statement filed signed by the seller stating that the goods are or are to be affixed to realty as provided by section sixty-seven of this article, such entries shall not be kept in a separate book but shall

be kept in the chattel mortgage index and the name of the buyer shall be entered in the column of "mortgagors" and the name of the seller in the column of "mortgagees". In all cases where a statement is filed signed by the seller stating that the goods are or are to be affixed to realty as provided by section sixty-seven of this article, the filing officer, except in the city of New York and in the County of Nassau shall also enter in such separate book or card index system, in addition to the facts required to be entered as above, the name of the owner of the realty, the time when the amount due upon such contract shall be due and under a column headed "property" he shall enter a brief description sufficient for the identification of the realty, and if in a city or village, its location by street and number, if known, and if in a city or county, other than the city of New York and the County of Nassau, where the block system of recording or registering and indexing conveyances is in use, the section and block in which such realty is situated. The filing officer, except in the city of New York and in the County of Nassau, shall also keep an index or card index system, alphabetically arranged under the names of the owners of the realty. A filing officer in the city of New York and in the County of Nassau, in all cases where a statement is filed signed by the seller stating that the goods are or are to be affixed to realty as provided by section sixty-seven of this article, shall enter in a separate book or card index system the date of filing, filing number, name of buyer and seller and the name of the owner of the realty, the time when the amount due upon such contract shall be due, and he shall enter a brief description sufficient for the identification of the realty, its location by street and number, if known, and the block in which such realty is situated. Such contract shall have endorsed thereon a designation of the number of the block within

which such realty is situated. In all cities and counties where such block system is in use, the index must be arranged according to the block numbers. For filing, entering and indexing such contract or copy thereof, or any assignment or satisfaction of such contract, or its discharge by payment of money into court, or its vacation by order of the court, the filing officer shall be entitled to a fee of fifty cents except in the city of New York and in the county of Nassau, and except that for filing and entering a contract described in section sixty-eight of this article the secretary of state shall be entitled to a fee of one dollar and to a fee of fifty cents for filing and entering a statement of the satisfaction of such a contract **(Substantially the same as Uniform Act, §10).**

§71. Refiling

The filing of conditional sale contracts provided for in sections sixty-five, sixty-six and sixty-seven shall be valid for a period of three years only. The filing of the contract provided for by section sixty-eight shall be valid for a period of fifteen years only. The validity of the filing may in each case be extended for successive additional periods of one year from the date of refiling by filing in the proper filing district a copy of the original contract within thirty days next preceding the expiration of each period, with a statement attached signed by the seller, showing that the contract is in force and the amount remaining to be paid thereon. Such copy, with statement attached, shall be filed and entered in the same manner as a contract or copy filed and entered for the first time, and the filing officer shall be entitled to a like fee as upon the original filing **(Uniform Act, §11).**

§80-h. Rules for Cases not Provided For

In any case not provided for in this article the rules of law and equity, including the law merchant, and in particular those relating to principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to conditional sales **(Uniform Act, §29).**

§80-i. Uniformity of Interpretation

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it **(Uniform Act, §30).**

No. [redacted]103

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IN THE

Supreme Court of the United States

October Term, 1949.

In the Matter

—*of*—

R. J. STEVENS BAKING CORP.,

Bankrupt,

CREAM-O PRODUCTS CORP.,

Petitioner,

—v.—

HARRY HOFFMAN, Receiver and Trustee,

Respondent.

BRIEF OF TRUSTEE IN BANKRUPTCY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

MAX SCHWARTZ,
Attorney for Trustee-Respondent.

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No. 860.

IN THE

Supreme Court of the United States

October Term, 1949.

In the Matter

—of—

R. J. STEVENS BAKING CORP.,

Bankrupt,

CREAM-O PRODUCTS CORP.,

Petitioner,

—v.—

HARRY HOFFMAN, Receiver and Trustee,

Respondent.

BRIEF OF TRUSTEE IN BANKRUPTCY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

The petitioner seeks to review the unanimous decision of the Circuit Court of Appeals for the Second Circuit, 180 F. (2d) 649, affirming the order of the United States District Court for the Eastern District of New York, which affirmed the order of the Referee in Bankruptcy dated June 13, 1949 adjudging the conditional bill of sale held by Cream-O Products Corp. to be null and void.

STATEMENT.

The statement of facts by petitioner is substantially correct, except the agreement dated March 10, 1948 (67-86), referred to in the conditional bill of sale as being simultaneously executed therewith but not filed, provided among other things as follows:

(a) R. J. Stevens Baking Corp. would, on Monday of each week, pay to Cream-O 10% of its gross sales of merchandise in the processing and packing of which the machines and packing materials sold under the agreement had been used (f. 76).

(b) Such payments would be applied first against the purchase price of the packing materials, and, when the same had been paid in full, against the purchase price of the machinery (f. 77).

(c) On November 17, 1949 the balance, if less than $5,000.00, was to be paid in full; if more, the buyer, R. J. Stevens Baking Corp., was to pay $5,000.00 and execute promissory notes for the amount remaining unpaid (ff. 77-78).

No express reservation of title to the machinery on the part of Cream-O was contained in said agreement of March 10, 1948. However, the agreement states:

> "Simultaneously herewith the parties hereto are duly executing a conditional bill of sale whereby Cream-O is conditionally selling and transferring to Stevens the following machinery * * *." (f. 68.)

Then follows an itemized statement of the machines sold thereunder.

The writ should not be allowed, firstly, because there is no conflict in decisions, and secondly, because the decision of the Circuit Court requiring the filing of the entire con-

tract accords with the prior decisions in this Circuit, other circuits, and ordinary rules of law.

The alleged contra decision cited by petitioner is not in point. It will be briefly analyzed later on.

THE QUESTION INVOLVED.

The issue presented to and determined by the Referee in Bankruptcy, the District Court, and the Circuit Court of Appeals, was: Is the conditional bill of sale null and void as against the trustee for failure to comply with Section 65 of the Personal Property Law requiring the filing of the contract or a copy thereof, where the conditional bill of sale is alone recorded, and refers to a contemporaneously executed written agreement, which was never filed, by which the parties specify the purchase price of the machines and the dates and manner of payment therefor?

POINT I.

THE CONDITIONAL BILL OF SALE IS NULL AND VOID AS AGAINST THE TRUSTEE.

The Referee, the District Court, and the Circuit Court of Appeals have all held that the conditional bill of sale is null and void as against the trustee on the ground that Section 65 of the Personal Property Law of the State of New York requires the filing of the contract or a copy thereof. Here all that was filed was a conditional bill of sale, which stated:

> "Title to the said machines and machinery shall remain in the vendor until the full purchase price therefor has been paid by the vendee in accordance with an agreement being entered into simultaneously herewith between the parties hereto." (f. 56.)

The contemporaneously executed written agreement of March 10, 1948, by which the parties specified the purchase

price of the machines and the time and manner of payment thereof, was never filed for record. Because of such failure, the Referee and the District Court held the conditional bill of sale to be null and void as against the trustee. This decision was affirmed by the Circuit Court of Appeals on the authority of *Empire State Chair Co., Inc.* v. *Beldock* (C. C. A. 2), 140 F. (2d) 587, cert. den. 320 U. S. 760.

It is submitted the Circuit Court properly and correctly held that the petitioner failed to distinguish the present case from the *Beldock* case, and that the failure to file so substantial a part of the contract as gives notice of the price and terms of the payment is a fatal defect.

POINT II.

THE DECISION OF THE CIRCUIT COURT IS NEITHER OPPOSED TO THE DECISIONS OF THE SEVENTH CIRCUIT OR ANY OTHER CIRCUIT, NOR TO THE PROVISIONS OF THE UNIFORM CONDITIONAL SALES ACT.

The Uniform Conditional Sales Act (New York Personal Property Law, Section 65), requires the filing of the contract or a copy thereof. Here the contract was made up in two parts: the instrument designating the conditional sales contract, and the simultaneously executed collateral agreement. Together they formed one contract. Only the instrument designated the conditional sales contract was filed. The collateral agreement was never filed. The Circuit Court of Appeals properly held there was no compliance with the statute.

This decision is in accord with the decisions in:

Salkin v. *Dubois* (C. C. A. 3), aff'g *In re Mineral-Lac Paint Co.* (D. C. Pa.), 17 F. Supp. 1, and *In re Smith* (D. C. Pa.), 19 F. Supp. 597;

Midwest Production Co. v. *Doerner* (C. C. A. 10), 70 F. (2d) 194;

In re Ford-Rennie Leather Co. (D. C. Del.), 2 F. (2d) 750;

Meier & Frank Co. v. *Sabin* (C. C. A. 9), 214 F. 231;

In re Martina (W. D. N. Y.), 39 F. Supp. 255;

In re Youngs Cornell Utilities Co. (E. D. N. Y.), 20 F. Supp. 381.

In re Jaeger, 284 F. 130, aff'd 284 F. 136, is not to the contrary. The facts in *In re Jaeger* are not applicable. The decision of the Court was based upon the particular wording of the state statute and the facts in the case. The Court held, at page 133, that:

> "* * * the price lists were not part of the contract, but were merely evidence tending to prove what the regular wholesale price was. * * * Being merely evidence, and not part of the contract, it follows that there was no necessity for filing such lists."

This is directly contrary to the situation in the case at bar, wherein the terms with respect to price and time and manner of payment, and the conditions with respect to reservation of title, were the essence of the terms of the collateral agreement which was never filed, and which the Referee, the District Court, and the Circuit Court of Appeals all held to be an essential part of the contract and constituted an indivisible part of the entire contract between the parties.

In re Jaeger, (*supra*), has never been cited nor relied upon by any other court upon the question involved herein, although the decision was rendered long prior to the cases cited herein.

There is no conflict in the interpretation of the Uniform Sales Act. The general rule is, as interpreted by the Court below and in *Empire State Chair Co., Inc.* v. *Beldock* (*supra*), and the cases cited therein.

In re Jaeger (*supra*), was decided upon peculiar facts in the case. If it is urged that it represents an interpretation of the Uniform Sales Act, the decision stands by itself, and in a distinct minority. But, in fact, there is no conflict and there is no question presented of any significant importance requiring the consideration of this Court. The decision of the Circuit Court of Appeals is in conformity not alone with the decisions of the courts of the State of New York, but with the decisions of the courts in other circuits, District Courts, and state courts.

To hold that what is one of the most important factors of a conditional sales agreement—the terms and conditions with respect to the reservation of title, to wit: the price, time and manner of payment, is not required to be made a matter of record—would be to emasculate the statute and defeat the very purpose of the provision requiring the filing of the entire contract.

The intent of the Uniform Conditional Sales Act, and the holdings of the various federal and state decisions, have all been to the effect that the failure to record a part of the agreement is a fatal defect.

CONCLUSION.

THERE BEING NO CONFLICT IN THE DECISIONS AND THERE BEING NO IMPORTANT QUESTION OF LAW INVOLVED, THE PETITION FOR CERTIORARI SHOULD BE DENIED.

Respectfully submitted,

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Attorney for Trustee-Respondent.